Painters & Allied Trades District Council 36 and Sign Display & Allied Crafts Local 510 and Freeman Exposition, Inc. *and* Teamsters Local No. 2785. Case 20–CD–253060

August 5, 2020

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (Act). Freeman Exposition, Inc. (the Employer) filed a charge on December 6, 2019, alleging that Painters & Allied Trades District Council 36 and Sign Display & Allied Crafts Local 510 (Local 510)[1] violated Section 8(b)(4)(D) of the Act by threatening to engage in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Teamsters Local No. 2785 (Teamsters). A hearing was held on February 26 and 27, 2020, before Hearing Officer Marta I. Novoa. Thereafter, the parties filed posthearing briefs. Teamsters also filed a motion to quash the Section 10(k) notice of hearing.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Employer is a corporation with its principal place of business in South San Francisco, California, and that during the calendar year ending December 31, 2019, the Employer purchased and received at its South San Francisco, California facility goods and materials valued in excess of $50,000 directly from points located outside the State of California. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that Local 510 and Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer installs equipment and material at trade shows, conventions, and other events in and around San Francisco, California. It stores and maintains its installation equipment, materials, and supplies (e.g., graphics, signage, carpeting, and wall systems) at its warehouse in South San Francisco.

The Employer, through a multiemployer group, executed a collective-bargaining agreement with Teamsters, the "Convention & Trade Show Agreement." This agreement, in relevant part, describes the scope of work to be performed by Teamsters-represented employees as the "[o]peration of all trucks and vans with a capacity of carrying in excess of 1.5 tons of deco material or freight, for purposes of producing Trade Shows, Conference's [sic] and Conventions in accordance with this Agreement and current work practices[.]"

The Employer is also bound to a separate multiemployer collective-bargaining agreement with Local 510, the "Trade Show and Convention Installer Agreement." Prior to 2012, this agreement allowed Local 510–represented employees to drive vehicles up to "a maximum capacity of one and one-half tons" in the delivery, installation, or removal of equipment and material identified in the contract. That limiting language, however, was not included in the agreements executed after 2012. Instead, the Employer's current contract with Local 510 states that Local 510 has "sole jurisdiction" over "driving of trucks (bobtails, and stake-beds and vans)" in the delivery, installation, or removal of equipment and material identified in the contract.

The Employer's initial shipments from its warehouse for an event installation constitute about 95 percent of its transportation work. The Employer uses employees represented by Local 510 to pull the equipment and material from inventory and to prepare it for delivery to the event site. It then uses Teamsters-represented employees to load the equipment and material onto tractor-trailers, drive the tractor-trailers from the warehouse to the event site, unload the tractor-trailers at the event site, and deliver the equipment and material to designated locations in the event site. Employees represented by Local 510 install some of the equipment and material after it arrives at its designated location.

The Employer's remaining transportation work involves shipping additional equipment and material from its warehouse on an as-needed basis during the installation for an event. The Employer and employees represented by both unions refer to this transportation work by various terms, including "hot runs," "errand runs," "emergency runs," "runner work," and "as needed runs." Employees performing this work use "runner" vehicles (e.g., box trucks, bobtails, panel vans, and stake beds) to transport

[1] Consistent with the parties' stipulation, we refer to these unions collectively as Local 510 hereafter.

the equipment and material to the event site. Some "runner" vehicles can carry over 1.5 tons of equipment and material, but none requires the driver to hold a commercial driver's license (CDL) or license endorsements. The equipment and material delivered by this method are urgently needed, sometimes resulting in two or three trips each day during the installation for an event. Until about September 2019, the Employer assigned runner work to employees represented by Local 510.

On about October 3, 2018, Teamsters filed a grievance alleging that the Employer violated the Convention & Trade Show Agreement by assigning runner work to employees not represented by Teamsters. The grievance advanced to arbitration. Local 510 was not a party in that proceeding. By order dated September 16, 2019, the arbitrator sustained the grievance and ordered the Employer to assign runner work to employees represented by Teamsters. Thereafter, the Employer assigned that work only to its Teamsters-represented employees.

By letter dated October 2, 2019, Local 510 grieved the assignment of the runner work to employees represented by Teamsters, and added that if the Employer did not reassign the work to Local 510–represented employees, Local 510 would "pursue all available remedies, including lawful primary picketing at show site."

B. Work in Dispute

The parties stipulated that the disputed work involves loading, unloading, and transportation of equipment and material using "runner" vehicles (box trucks, panel vans, stake beds) during trade shows and other events produced by the Employer's South San Francisco Branch.

C. Contentions of the Parties

Teamsters moves to quash the notice of hearing, arguing that the Employer created a work preservation dispute, which is not within the scope of Section 10(k). Alternatively, if the notice of hearing is not quashed, Teamsters contends that the work in dispute should be awarded to employees it represents based on contractual language, relative skills and training, and area and industry practice.

The Employer and Local 510, in separate briefs, oppose Teamsters' motion to quash, contending that the case presents a jurisdictional dispute appropriately brought before the Board pursuant to Section 10(k), and that there is reasonable cause to believe that Local 510 violated Section 8(b)(4)(D) by threatening to picket the Employer to force it to reassign the disputed work to employees represented by Local 510.

On the merits, the Employer and Local 510 assert that the work in dispute should be assigned to employees represented by Local 510 based on the factors of employer preference and past practice and area and industry practice. Local 510 further asserts that the factor of economy and efficiency of operations weighs in favor of awarding the disputed work to employees it represents.

D. Applicability of the Statute

The Board may proceed with a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005). This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work and that a party has used proscribed means to enforce its claim to that work. Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. Id. We find that these requirements have been met.

1. Competing claims for work

The parties stipulated that both Local 510 and Teamsters have claimed the work in dispute for employees they respectively represent. Teamsters additionally argues, however, that the Employer created the dispute, the subject of which is work preservation rather than competing claims for work, and therefore this dispute is not within the scope of Section 10(k). We find no merit in this contention. First, Teamsters' contention is contrary to the stipulation that both parties have claimed the work in dispute. In addition, the existence of competing claims for the work is demonstrated by Teamsters-represented employees' performance of the work in dispute[2] and Local 510's grievance seeking to reassign that work to employees it represents.[3] Further, evidence that the Employer previously assigned the disputed work to Local 510–represented employees (discussed below) demonstrates that the Employer did not, as Teamsters contends, create a work preservation dispute by allocating the disputed work to a group of employees that previously had not performed it.[4] Accordingly, we find that there are competing claims for the work in dispute.

[2] *Electrical Workers Local 47*, 368 NLRB No. 11, slip op. at 4 (2019).

[3] *Laborers Local 110 (U.S. Silica)*, 363 NLRB No. 42, slip op. at 3 (2015).

[4] Cases cited in support by Teamsters, therefore, are distinguishable. See *Machinists District 190 Local 1414 (SSA Terminal, LLC)*, 344 NLRB 1018, 1020 (2005) (employer created a work preservation dispute by reassigning work away from the only group that had performed it); *Seafarers (Recon Refractory & Construction)*, 339 NLRB 825, 827–828 (2003) (employer created a work preservation dispute by assigning refractory work to a group of employees that had not previously performed it); *Teamsters Local 578 (USCP-WESCO)*, 280 NLRB 818, 820 (1986) (employer created a work preservation dispute by unilaterally

2. Use of proscribed means

We find reasonable cause to believe that Local 510 used means proscribed by Section 8(b)(4)(D) of the Act to enforce its claim to the work in dispute. In its October 2, 2019 letter to the Employer, Local 510 stated that if the Employer did not reassign the disputed work to employees it represents, Local 510 would "pursue all available remedies, including lawful primary picketing at show site." The Board has long considered this type of threat to be a proscribed means of enforcing claims to disputed work. See *Laborers Local 860 (Anthony Allega Cement Contractor)*, 336 NLRB 358, 361 (2001) (reasonable cause to believe labor organization used proscribed means to enforce claim to disputed work by threatening to "exercise any and all legal means," "including, if necessary, picketing"). Contrary to the contention of Teamsters, a threat of this nature is sufficient to constitute a violation of Section 8(b)(4)(D) even if it is not followed by other action. See *Operating Engineers Local 150 (Patten Industries)*, 348 NLRB 672, 674 (2006).

3. No voluntary method for adjustment of dispute

The parties stipulated, and we find, that there is no agreed-to method for voluntary adjustment of the dispute.

Based on the foregoing, we find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that there is no agreed-upon method for the voluntary adjustment of the dispute. We accordingly find that the dispute is properly before the Board for determination, and we deny Teamsters' motion to quash the notice of hearing.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577 (1961). The Board's determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410 (1962).

The following factors are relevant in making the determination of this dispute.

1. Board certifications and collective-bargaining agreements

There is no evidence of any Board certifications concerning any of the employees involved in this dispute. However, both Local 510 and Teamsters argue that their respective collective-bargaining agreements with the Employer entitle the employees they represent to perform the disputed work.

The Employer is bound to the Trade Show and Convention Installer Agreement with Local 510. The jurisdiction clause of that agreement states, in relevant part, that Local 510 has "sole jurisdiction" over "driving of trucks (bobtails and stake-beds and vans) in the delivery and/or installation, removal of the above work, and warehouse work, including forklift operation where currently performed." Teamsters and the Employer are bound to the Convention & Trade Show Agreement. The scope of that agreement includes the "[o]peration of all trucks and vans with a capacity of carrying in excess of 1.5 tons of deco material or freight, for purposes of producing Trade Shows, Conference's [sic] and Conventions in accordance with this Agreement and current work practices[.]"

Both collective-bargaining agreements appear to cover the work in dispute. As noted above, the "runner" vehicles used in performing the work in dispute include bobtails, stake beds, and vans, i.e., vehicles specifically referenced in the Local 510 agreement, and the record also shows that some of these vehicles have the capacity to carry over 1.5 tons of material, as referenced in the Teamsters agreement. Accordingly, we find that this factor does not favor an award of the work in dispute to either group of employees. See *Laborers Local 1184 (High Light Electric)*, 355 NLRB 167, 169 (2010).

2. Employer preference and past practice

The Employer's senior vice president of operations and general manager of the San Francisco office, Bill Kuehnle, testified that he started working for the Employer in San Francisco in 2009, and that the Employer's practice at that time was to use Local 510–represented employees to perform the disputed work. Kuehnle also testified that the Employer's practice became the subject of the Teamsters' 2018 grievance, that the Employer took the position in the subsequent 2019 arbitration proceeding that the "status quo should be preserved," and that it continued its practice until the arbitration award directed the Employer to reassign the disputed work to Teamsters-represented employees. Kuehnle further testified that, currently, he "leaned on the side of the status quo" and that it "still makes sense to [him] moving forward."[5]

Local 510's field representative, Joe Toback, testified that Local 510–represented employees previously

subcontracting work that was previously performed only by its own union-represented employees, in violation of contractual limitations on subcontracting).

[5] Teamsters argues that Kuehnle's second reference (above) to "status quo" is vague because it can be interpreted as the status quo at the time of the arbitration proceeding (assigning work to Local 510–represented employees) or the status quo at the time of the hearing (assigning work

performed the disputed work, and that in 2012 the parties revised the Trade Show and Convention Installer Agreement with an eye toward Local 510–represented employees' continued performance of the disputed work. Toback testified that the Employer only changed its practice in late 2019, assigning the disputed work exclusively to Teamsters-represented employees pursuant to the 2019 arbitration award.

Teamsters contends that the Employer's past practice is "mixed." In support, it relies on a Board of Adjustment Decision, issued after Teamsters filed its grievance in 2018. However, in that decision the members of the Board of Adjustment deadlocked and reached no opinion about the Employer's assignment of work to employees not represented by Teamsters. Teamsters also relies on the 2019 arbitration decision, but the arbitrator there stated that the record showed a lack of clarity or consistency in the Employer's practice, noting that testimony about it (rather than the practice itself) was "mixed." In any event, the arbitrator's findings in that proceeding are not controlling here. See *Nashua Printing Pressmen Local 359 (Telegraph Publishing Co.)*, 212 NLRB 943, 944 fn. 4 (1974) ("It is well settled that the Board is not bound in a jurisdictional dispute by the results of an arbitration proceeding which one of the parties did not agree to and in which it did not participate.").

We find, based on the foregoing evidence, that this factor favors awarding the work in dispute to employees represented by Local 510.

3. Area and industry practice

GES is a general contractor that installs trade shows in and around San Francisco. Its vice president of labor relations, Guy Langlais, testified that GES had assigned runner work to employees represented by Local 510 for almost 20 years before its recent assignment of such work to Teamsters-represented employees. Langlais testified that the work was reassigned after Teamsters representatives showed GES the 2019 arbitration award requiring the Employer to assign runner work to Teamsters-represented employees.

Local 510's field representative, Toback, testified that he worked for GES between 1998 and 2019, and that during that period employees represented by Local 510 performed runner work for GES. Toback further testified that "all the companies" in the area assigned runner work to employees represented by Local 510 and that he never observed Teamsters-represented employees performing such work.

Robert Fabris, a Teamsters-represented foreman, works for GES at its warehouse in San Francisco. He testified that transportation work he observed from January 2019 to October 2019 broke down to about 90 percent performed by Teamsters-represented employees and 10 percent performed by Local 510–represented employees. However, Fabris further testified that he was not always in the warehouse and that he did not know the amount of work performed by employees represented by either union before January 2019.

We find, based on the above testimony, that the weight of the evidence relevant to this factor favors an award of the disputed work to employees represented by Local 510.

4. Relative skills and training

Teamsters contends that this factor weighs in favor of awarding the disputed work to employees it represents because they possess skills and training that Local 510–represented employees do not. In support, it relies on testimony by Teamsters employee William Cromartie that Teamsters-represented employees maintain CDLs and can drive vehicles requiring Class A and Class B licenses with endorsements. However, Kuehnle testified that each group of employees has performed the disputed work, which demonstrates they both possess the necessary skills. Kuehnle further testified that employees do not need CDLs or license endorsements to drive the runner vehicles, thereby revealing that these qualifications are not needed to perform the work in dispute.

We find that this factor does not favor awarding the disputed work to either group of employees.

5. Economy and efficiency of operations

Local 510 contends that this factor weighs in favor of awarding the disputed work to employees it represents because they perform work that Teamsters-represented employees do not. In support, Local 510 relies on Kuehnle's testimony that Local 510–represented employees pull equipment from inventory. We find this contention unpersuasive. First, the record does not show, nor does any party contend, that pulling equipment from inventory is an aspect of the work in dispute. And, significantly, Kuehnle's testimony about the additional work performed by Local 510–represented employees was offered as background information. The testimony does not explain how assignment of the disputed work to employees who pull equipment from inventory would necessarily contribute to

to Teamsters-represented employees). We find this argument to be without merit. In context, Kuehnle's testimony that the status quo "still makes sense" clearly conveys that the Employer's current view is the same as its view previously expressed at the 2019 arbitration proceeding. Indeed, the Employer presented this testimony as evidence of its current preference to assign the work to employees represented by Local 510.

the Employer's economy and efficiency of the operations.[6] We therefore find, contrary to Local 510, that this factor does not favor awarding the work in dispute to either group of employees.

Conclusions

After considering all of the relevant factors, we conclude that employees represented by Local 510 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference and past practice and area and industry practice. In making this determination, we award the work to employees represented by Local 510, not to that labor organization or to its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Freeman Exposition, Inc., represented by Painters & Allied Trades District Council 36 and Sign Display & Allied Crafts Local 510 are entitled to perform loading, unloading, and transportation of equipment and materials using "runner" vehicles (box trucks, panel vans, stake beds) during trade shows and other events produced by the Employer's South San Francisco Branch.

Dated, Washington, D.C. August 5, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

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[6] Cases cited in support by Local 510, therefore, are distinguishable. See *International Brotherhood of Electrical Workers Local 876*, 365 NLRB No. 81, slip op. at 5 (2017) (factor of economy and efficiency of operations weighed in favor of group of employees that could perform all aspects of the work in dispute, where other group of employees could only perform some aspects of it); *Laborers Local 113 (Michels Pipeline Construction)*, 338 NLRB 480, 484 (2002) (factor of economy and efficiency of operations weighed in favor of group of employees that could perform the disputed work and attendant work not within the scope of the disputed work at the same time, where other group of employees lacked expertise necessary to perform attendant work).